

DEPARTMENT OF STATE REVENUE

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 99-0385P

**Gross Income Tax
Calendar Year Ended 12/31/97**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, a Delaware corporation, protests penalties assessed for calendar year ended December 31, 1997. A rehearing request was approved. Taxpayer provided written documentation dated July 31, 2000.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer states it exercised reasonable care, caution, and diligence and provides the following:

- 1) For at least 10 years, taxpayer had successfully met its tax payment and filing obligations in Indiana and had been in business in Indiana since 1980.
- 2) Taxpayer and its predecessors have been in good corporate standing with the State of Indiana.
- 3) The most senior tax employee left in December 1995, leaving taxpayer without tax manager oversight.
- 4) Through 1996 and 1997, taxpayer hired various consultants to advise it as to, among other matters, its various tax filing requirements in all 50 states.
- 5) Taxpayer hired and retained experienced tax consultants, accountants, and preparers to assist it in meeting its tax filing obligations.
- 6) In February of 1998, taxpayer was finally able to employ experienced tax personnel who ensured compliance with Indiana tax compliance requirements, which resulted in the error being discovered by taxpayer.

- 7) In May/June of 1998, taxpayer's tax personnel discovered the error in underpayment of tax and immediately paid the amount due, even though the Indiana tax return was not filed until September/October of 1998.

Taxpayer states the foregoing points support reasonable care, caution, and diligence being exercised on the part of the taxpayer, but the strongest point is that the taxpayer could not have taken any additional action on its part to avoid the penalty. That is, the Taxpayer made every reasonable attempt to ensure compliance with the tax payment and filing obligations in Indiana. The error (made by the tax preparer) occurred despite the reasonable care, caution, and diligence exercised by the Taxpayer. Clearly, the actions taken by the Taxpayer do not represent actions of "carelessness, thoughtlessness, disregard, or inattention to duties." Accordingly, the Taxpayer respectfully requests that the penalty be waived.

IC 6-8.1-10-2.1 assesses a penalty (a) If a person:

- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment.

On September 17, 1999 the department issued its proposed assessment for the tax balance, penalty, and interest. Penalty was calculated at ten percent (10%) for the payment made on June 16, 1998 less credit for payment previously made. The penalty was assessed because the payment was late and less than ninety percent (90%) of the expected tax due was not paid by the original due date. Taxpayer history indicates it made the first two quarter payments of estimated tax on April 18, 1997. No further estimated payments were made. In fact, the check in the amount of \$220,000 was not postmarked until July 1, 1998.

IC 6-8.1-6-1 clearly states that at least ninety percent (90%) of the tax that is reasonably expected to be due must be paid on or before the due date or penalties may be imposed for failure to pay the tax.

Taxpayer failed to provide reasonable cause to allow the department to waive its penalty. Taxpayer, as the successor of several S-corporations that operated in the State of Indiana, should have made itself aware of its tax liabilities.

FINDING

Taxpayer's protest is denied.